REMARKS

This is in full and timely response to the above-identified Office Action. The above listing of the claims replaces all prior versions, and listings, of claims in the application. Reexamination and reconsideration in light of the proposed amendments and the following remarks are respectfully requested.

Claims Status

In this response: claim 1 has been cancelled; independent claim 2 has been amended via the introduction of a portion of the subject matter set forth in claim 4; and independent claims 20 – 22 have also been amended to include the same subject matter transferred from claim 4 into claim 2. Claims 2-22 therefore remain in the application.

Rejections under 35 USC § 102

Claims 1-3, 5-8, and 20-22 stand rejected under 35 USC § 102(a) as being anticipated by the disclosure of USP 5,937,191 to Graham. This rejection is traversed.

The rejection of independent claims 1-2 and 20-22 is traversed in that the amendments proposed in this response are such as define subject matter which is neither disclosed nor suggested by the art of record.

In this response, it is proposed that subject matter from a claim which stand rejected only under § 103 be transferred into the above-mentioned independent claims. More specifically, the subject matter which is transferred comprises two of the three conditions which were recited in claim 4 and which are conditions which are not specifically disclosed or suggested in the reference to Lethin et al. (USP 6,463,582). That is to say, only one of the three conditions which were recited in claim 4 was cited as being disclosed Lethin et al. Accordingly, the remaining two conditions are therefore implicitly acknowledged as being neither disclosed nor suggested by the art applied against claim 4. The transfer of this "un-rejected" subject matter into the independent claims mentioned above, is submitted to render the amended claims patentable over the art of record.

It is submitted that the transfer of two of the three conditions which were recited in claim 4, into independent claim 2, for example, does not raise any new issues that would inhibit the entry of the proposed amendments. The three conditions recited in claim 4, were presented for examination, and were examined. The fact that only one condition could be found in the art does not obviate the fact that all three were examined/searched and the issues raised thereby were considered. The absence of art sufficient to enable the rejection of all of the subject matter recited in claim 4 does not negate the fact that claim 4 recited the combination of each of the three conditions with subject matter of claim 2 (a dependent claim inherently contains all of the limitation of the claim or claims from which it depends) and does not negate that the issues have been present in the claims.

That is to say, the subject matter of claim 2 with condition (1), the subject matter of claim 2 with condition (2) and the subject matter of claim 2 with condition (3), were all presented for examination. The PTO was able to reject only one of these three combinations. The PTO's failure to establish a *prima facie* case against the other two recited possibilities should not be held against the Applicants. The amendment which moves the two non-rejected limitations is essentially the same as deleting the condition alleged to be disclosed by the secondary reference, from the recited alternatives and thus removing the effectiveness of the reference.

The entry of the proposed amendment to claim 2 renders the patentability of claim 2 over the art cited, undeniable. Thus, even though combination of subject matter of claim 2, as amended above, and claims 3 and 5-19, which depend therefrom, may be new per se, the patentable status of claim 2 in view of the art currently applied, negates this and places claim 3 under the protective umbrella of an allowable claim.

It is therefore submitted that the amendments presented in this response are such as to place the claims in condition for allowance and should be entered for at least this reason.

Rejections Under 35 USC § 103

Since claims 3-19 depend from a claim which is deemed to be allowable for the reasons advanced above, it is submitted that claims 3-19 are also deemed allowable

because they depend from a claim which recites a combination of elements which are neither disclosed nor rendered obvious by the art of record. For at least this reason, it is submitted that all of the rejections under 35 USC § 103 are rendered moot.

Conclusion

It is submitted that the claims are now clear and distinct and that this application stands in condition for allowance for at least the reasons advanced above.

Respectfully submitted,

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By _____

HEWLETT-PACKARD COMPANY
Customer Number: 022879

William T. Ellis
Registration No. 26,874

Keith J. Townsend
Registration No. 40,358